Maine's Subdivision Law and Home Rule

A Report as Required by PL 2001, c. 359
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Executive Summary

Legislative Charge:
Public Law 2001, c 359 §7, required that, at a minimum, the State Planning Office (SPO):

- create a catalog of municipal subdivision definitions; and
- prepare a legislative history of Maine subdivision law with a focus on home rule authority; and
- complete a list of possible strategies to coordinate subdivision review and title search procedures.

Key Findings:
The SPO consulted with the Maine Municipal Association (MMA), the Maine Realtors Association (MRA), the Maine Real Estate Developers Association (MREDA), the Maine Bankers Association (MBA), and the Maine State Housing Authority (MSHA) in reviewing the subdivision law. Developers and those involved in real estate transactions expressed a desire for a uniform definition across municipal boundaries in order to reduce confusion and the uncertainty of getting a clear title to land. They also expressed concern about the impact of customized regulations on the cost of housing. The municipal association expressed the concern of municipalities that want to be able to address local situations through their home rule authority. Some municipalities have felt the effect of incremental development and seek to control unregulated impacts, such as roads not built to a reasonable standard, through stricter definition of subdivision. SPO has attempted to respect the best of the arguments made by each of these groups, and advance good planning.

The SPO has made four key findings. These findings address the Legislative charge and further examine the link between subdivision and growth management.

1. The definition of a subdivision varies widely among municipalities.

   The MMA conducted a survey of all 457 organized communities not under the jurisdiction of the Land Use Regulation Commission, requesting information about their subdivision ordinances. Of these, 225 communities responded (49.2%) and provided copies of their ordinances.

   - 52.4% of the respondents adopted a definition that matched the statutory definition at one point in time, but very few of these match the existing statutory definition.

   - 34.2% of the respondents adopted the statutory definition by blanket reference. (27.3% of those that adopted by reference, referenced sections of statute that have been re-codified and no longer exist)

   - 13.3% of the respondents have exercised their home rule authority and modified the definition of a subdivision.

2. Based on research by MMA, Maine's subdivision law has been frequently amended and litigated since its creation. There are two significant events regarding home rule and the

definition of a subdivision:

- the Law Court's decision in Town of Arundel v. Swain, 374 A.2d 317 (ME 1977), that a town's authority to conduct subdivision reviews is limited to the statutory definition of subdivision.

- LD 2684 of the 113th Legislature's Third Special Session (PL 1987, c. 885), which was a direct answer to the Court's 1977 *Arundel* opinion. The LD included statutory language and a Statement of Fact that clearly indicated the Legislative intent to allow municipalities to amend the definition of a subdivision to review more divisions than required by statute.

3. According to title attorneys and bankers, the ability of title research to accurately assess the clear title to a parcel that has undergone division at some time in the past is difficult due to variable definitions among municipalities and potential changes over time within a municipality.

4. Subdivision law is an important tool for growth management but is no longer required to be consistent with a local comprehensive plan.

Recommendations:
The SPO makes the following four recommendations to improve consistency from municipality to municipality, minimize restriction of home rule authority, ensure that local subdivision definitions don't frustrate title searches and unnecessarily increase the cost of subdivisions, and re-connect an important growth management tool to local comprehensive plans that are consistent with the state's Planning and Land Use Regulation Act. These recommendations, taken together, provide the improved uniformity desired by the real estate community, while protecting the authority of municipalities to more strictly regulate subdivisions in areas less suited for growth. They also put safeguards into place, ensuring that locally adopted definitions are obvious and available to title researchers. Proposed statutory amendments are included at the end of this report, before the attachments.

1. There should be a single statewide minimum definition of a subdivision.

2. Municipalities with a comprehensive plan that is consistent with state law should be allowed to create a local definition of a subdivision for their designated rural areas, as locally defined, that allows the review of more divisions than required by the statutory definition in their rural areas. The minimum state definition should apply in locally designated growth areas, since those are the areas with capacity for growth and are where the municipality has said it wants to direct growth. In municipalities without consistent comprehensive plans, the state definition would apply uniformally.

3. Local subdivision ordinances or regulations should be required to be consistent with local comprehensive plans , documenting the need for a stricter definition.

4. Local changes to the definition of a subdivision should be recorded at the Registry of Deeds for the county in which the municipality exists. A map clearly showing the parcels affected by the local definition should also be recorded at the Registry of Deeds. Without these recordings, the local definition should be deemed invalid.

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Study Authorization

The 120th Legislature passed LD 1278, An Act to Implement the Recommendations of the Task Force to Study Growth Management, into on May 30, 2001. On June 6, 2001, Governor King signed the bill into law as PL 2001, c. 359. Section 7 of that law requires that:

> "The Executive Department, State Planning Office shall conduct a study of the status of municipal subdivision ordinances with respect to the local review of subdivisions as defined by municipal ordinance and the process of conducting a title search in the furtherance of a real estate transaction and providing an opinion on the quality of title. At a minimum the study must include: the cataloging of municipal subdivision ordinances according to the definitions of "subdivision" used, an analysis of the legislative history of Maine's subdivision law with a focus on its relationship to home rule authority and a list of possible strategies to coordinate the subdivision review and title search procedures. The office shall consult with interested parties as necessary. The office shall submit its report to the Joint Standing Committee on Natural Resources before December 15, 2001, and the committee is authorized to report out legislation during the Second Regular Session of the 120th Legislature that will properly coordinate the subdivision review and real estate title search procedures."

Summary of Municipal Ordinances

Maine's 457 organized municipalities not located within LURC jurisdiction were asked by the Maine Municipal Association (MMA) to submit their ordinance definition of "subdivision" for the purpose of determining the degree the ordinance definitions deviated from a common statutory definition. Of the 457 organized municipalities, 225 provided their definitions. Attached to this summary is a spreadsheet (Attachment 1) that describes in detail the varying elements of the ordinance definitions that were submitted.

	Number of Municipalities Responding	% of the 225 Respondents
Definition Adopted by blanket reference	77 Municipalities (21 of these 77 reference the 1970s statute)	34.2% (27.2% of the 77 reference the 1970s statute)
Articulated Definition that matched statutory definition at one point in time	118 Municipalities	52.4%
Articulated definition that exercises home rule by being more inclusive (reviewing more divisions) than the statutory definition	30 Municipalities	13.3%

It is apparent that for a variety of reasons the municipal definition of "subdivision" is not uniform among the municipalities. The reasons include:

1. confusion over the legal capacity of municipalities to adopt the statutory definition by blanket reference;

2. a stream of legislative enactments and recodifications that makes it difficult for municipalities to keep current with a common definition;

3. municipal interest in exercising home rule authority to address the need for land development review in the community.

In short, some of the "patchwork quilt" effect is the result of legislative activity and confusion with respect to intent, and some of that effect is the result of the exercise of home rule.

Adoption by Reference**.** Of the 225 municipal ordinances submitted, 77 (34.2%) adopted a definition of subdivision by blanket reference (see Attachment 1 spreadsheet summary). The adoption of an ordinance by unrestricted reference, (i.e, "subdivision" will have the meaning as provided in Title 30-A M.R.S.A. §4401, *as amended from time to time*), is legal, contrary to the attached report by MMA (Attachment 2). It is true that the adoption by reference to an exterior code, with the blanket "as may be adopted from time to time" is not legal; however, in this case the exterior code is a statutory minimum definition.

There are obvious local political and administrative problems that may arise from the adoption of a state mandatory minimum definition by reference, but they do not rise to the level of creating legal problems for the municipality. A municipality that adopts the definition of a subdivision by reference may find that after several years its definition is less inclusive than an amended statutory definition, in which case the statutory definition applies, not the local definition. Conversely, if the statutory definition is amended to be less inclusive than the definition that the municipality adopted, the local definition would apply.

Frequently Amended Statutory Definition. The spreadsheet (Attachment 1) depicts the 20-plus elements of the statutory definition that are the foundation of municipal subdivision ordinances. A review of the spreadsheet reveals that any particular municipal definition of subdivision is frozen at a particular point in time with respect to the constantly evolving statutory definition. For example, 21 (9.3%) of the 225 respondents' definitions still expressly or by their language follow the provision of Title 30 M.R.S.A § 4956, which dates back to the early 1970s. These 21 municipalities include some small towns, but surprisingly also include some larger municipalities with planning staff and significant growth pressures. That definition does not expressly include subdivisions of new structures, subdivisions created by the placement of three or more structures, the division of commercial or industrial use into residential structures, the exemption of "open space" lots, the five-year subsequent conveyance "de-exemption" provisions, and

several other provisions that are now part of the current definition. This means that the local definition is invalid and the current statutory definition applies.

A thorough review of the attached spreadsheet shows that virtually no municipal ordinance that attempts to articulate the definition of subdivision is completely current with respect to state law. The only ordinances that could be said to be completely current are those that adopt the state law definition by blanket reference, which is the advisable method of referencing that statutory definition.

Home Rule**.** Beyond the possible administrative confusion regarding referencing a state definition or the adoption of an articulated definition of subdivision that is no longer current with the statutory definition, the attached spreadsheet reveals examples of the express use of home rule authority. Some examples include:

- Several communities define the term "relative" to narrow the scope of the gift-to-relative exemption. Another creates a ten-year reconveyance window, rather than a five-year subsequent reconveyance period, to "de-exempt" a gift to a relative.

- At least one municipality expressly sweeps the conversion of a multi-family apartment into a condominium into subdivision review.

- Several municipalities expressly sweep malls, mini-malls, and structural subdivision for commercial purposes into the definition of subdivision. Many ordinances deem mobile home parks as subdivisions.

- At least one community defines subdivision as a single division (i.e., the creation of two lots) within a five-year window. At least one municipality defines subdivision as the "functional division" of a tract or parcel.

- At least one municipality only allows the subdivider's retained lot exemption if, after the first dividing, the subdivider has retained both lots as a single family residence for five years.

- One municipal definition of subdivision provides that any parcel within an approved subdivision shall not be further divided in any matter that would alter the approved subdivision plan without Planning Board approval, unless more than five years has elapsed since the most recent approval, including amendments.

- Several municipalities have elected to count lots of up to 200 or more acres for the purpose of subdivision review. Others have elected to count lots of up to 500 acres.

- One municipality limits the class of individuals that are eligible to use the "bona fide interest" exemption to only relatives.

- Several municipalities define subdivision as a division of a tract or parcel of land into three or more lots within any five-year period whether accomplished by:
    - Sale or lease of land
    - Offering to sell or lease land
    - Construction, sale or lease of principal buildings; or
    - Offering to construct, sell, or lease principal buildings

- One ordinance exempts all divisions of land that are accomplished for agricultural purposes.

Legislative History of the Subdivision Law and Home Rule Authority

Based on the actions of the Court in Town of Arundel v. Swain, 374 A.2d 317 (ME 1977) (Attachment 3) and the Legislative response in "An Act to Enhance Land Use Regulation" (PL 1987, c. 885) (Attachment 4), it is clear that the language of the subdivision definition allows for home rule changes to the definition of a subdivision. However, those changes must create a more inclusive definition than state statute (i.e. the municipality reviews more divisions than required by statute). Therefore, there is a partial preemption of home rule authority, but home rule authority clearly exists. A complete Legislative history of subdivision law is given in Attachment 5.

Attachment 2, provided by the Maine Municipal Association, includes an enactment by enactment summary of the subdivision law in Maine from its creation in 1943 to the present. The most pertinent enactments relevant to home rule authority are "An Act to Clarify the Home Rule Authority of Municipalities" (PL 1987, c. 583) (Attachment 6), and "An Act to Enhance Land Use Regulation" (PL 1987, c. 885).

Prior to 1970, municipal authority in Maine was limited to powers expressly or impliedly granted under state statute, a doctrine referred to as Dillon's Rule originally described by Iowa Supreme Court Justice John F. Dillon in 1868 (see Attachment 7 on Home Rule in Maine as of 1985). The enactment of the Home Rule Enabling Act in 1970 (PL 1969, c. 563) changed the relationship between local and state governments. The Home Rule Enabling Act, now codified as Title 30-A M.R.S.A. §3001, provided municipalities with the authority to "exercise any power or function which the Legislature has power to confer upon it, which is not expressly denied or denied by clear implication". The intent of this legislation was to provide municipalities with authority to regulate local matters, unless the legislature preempted that authority.

Home rule authority may be implemented either by charter or through Title 30-A, §3001. Municipalities with a charter can adopt, revise, or amend their charter to provide for home rule authority.

PL 1987, c. 583, "An Act to Clarify the Home Rule Authority of Municipalities", reemphasized the Legislature's commitment to Maine's home rule scheme (Attachment 4). The underlying purpose of the Act was to clarify that the grant of home rule authority did not require additional enabling legislation. This intent was carried out through the enactment of the "standard of preemption" now found in Title 30-A, §3001(3). This standard provides that "the Legislature shall not be held to have implicitly denied any power to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law". This standard is to be used by the courts in determining whether home rule authority has been implicitly preempted. As a result, for a court to find that authority to adopt an ordinance has been preempted, it must determine whether the Legislature has expressly or implicitly prevented the municipality from acting. Therefore, with respect to the question of whether municipalities are preempted form adopting a definition of a subdivision that was more inclusive than the state definition, two analyses must be completed: (1) is there an express preemption of the authority, or (2) is there an implied preemption of the authority?

Express Preemption: No express preemption of municipal home rule authority with respect to subdivision exists. An example of how the Legislature might have preempted municipal authority can be found in Title 30-A, M.R.S.A. §4351, with states that "this subchapter provides express limitations on home rule authority" (subchapter III of Chapter 187 of Title 30-A, governing municipal zoning authority). No such preemption language was enacted by the Legislature with respect to subchapter IV of chapter 187, the subchapter containing the subdivision laws.

Implied Preemption: Because there is no express preemption of home rule authority, the second test is whether there is implied preemption. An implied preemption exists when the state regulatory scheme so completely inhibits the regulatory field that there is no room for municipal regulatory authority, or where municipal ordinances with more inclusive definitions would frustrate state law.

Although the question of implied preemption can be the victim of subjective opinion, and therefore may lead to litigation, implied preemption with respect to subdivision was clearly address by the Law Court in 1977 and the Legislative response to the Court's opinion in 1987.

Despite the passage of Maine's Home Rule Enabling Act in 1970, the Law Court's interpretation of Maine's home rule scheme emphasized the State's supremacy on matters addressed in statute. The 1977 Law Court's opinion in *Town of Arundel v. Swain* (374, A.2d 317 ME 1977) illustrated its position that local authority to write a more inclusive subdivision definition did not exist in state law, because there was no specific enabling legislation on the matter. The Court indicated that the town was bound by legislative definition in enabling statute, creation of a campground was not within the statutory definition of a subdivision into lots, and the town had no jurisdiction over the creation of campgrounds.

PL 1987, c. 885, "An Act to Enhance Land Use Regulation", specifically answered the Law Court's 1977 opinion and reversed it by explicitly enabling and reiterating home rule authority to adopt a more inclusive definition of a subdivision. On its face, PL 1987, c. 885, arguably contains some confusing language that may lead one to assume that the statute implies the preemption of home rule authority with respect to subdivision review and the definition of a subdivision. The specific language of Title 30-A, §4401(4)(H), which is essentially the same as the original language of PL 1987, c. 885, states, in part:

> "Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority that:
>
> (1) Expands the definition of subdivision to include the division of a structure for commercial or industrial use; or
>
> (2) Otherwise regulates land use activities."

Opponents of home rule, with respect to subdivision law, argue that since item (1) specifies two areas where the definition of a subdivision can be modified by a municipality, the Legislature has implied a preemption of any other changes to the definition. Proponents of home rule, with respect to subdivision law, argue that item (2) expressly permits municipalities to modify the definition of a subdivision to review divisions in addition to the ones required to be reviewed by the state definition.

The Legislature's intent on the issue of home rule was expressed in the the Statement of Fact in LD 506 in the 113th Legislature's Third Special Session, which became PL 1987, c 885, "An Act to Enhance Land Use Regulation". This law specifically addressed home rule authority with respect to subdivision law. The Statement of Fact says, in part:

> "This express acknowledgement of municipal home rule authority is made to overrule the suggestion in the Law Court's decision in Town of Arundel v. Swain, 374 A.2d 317 (ME 1977), that a town's authority to conduct subdivision reviews is limited by the statutory definition of subdivision. This amendment follows the approach of PL 1987, c. 583, to clarify municipal home rule authority in this area. The subdivision statute is not an 'enabling statute' as suggested by the Court in the Town of Arundel opinion, but is a mandate imposed on municipalities to conduct a review of certain developments. As a statutory mandate, it describes those developments for which municipal review is required but does not restrict the types of developments which municipalities are permitted to review. Interpreted under the standard of review found in the Maine Revised Statutes, Title 30, section 2151-A, the statute does not restrict a municipality's home rule authority to require the review of other developments by including them within the definition of 'subdivision', except where the municipal definition would frustrate the purpose of the state statute."

Subdivision Law and Title Research

Local variations in the definition of a subdivision make the process of certifying title on a parcel difficult. Under current law, municipalities may amend the definition of a subdivision, in order to review more divisions than state law allows. However, municipal

records of modifications to the definition over time can be incomplete, making proper title to parcels in the municipality divided during the time when the municipality had a definition that differed from state law difficult to complete.

Title attorneys review many issues with respect to a property before rendering an opinion on the marketability of a title (Attachment 7). All of the items (liens, mortgages, rights of way, easements, covenants, etc) are a matter of public record, recorded at the Register of Deeds. The one identifiable item that is not a matter of record at the Registry of Deeds is a definition of subdivision that differs from state statute within a municipality. Searching municipal records for a copy of the subdivision ordinance or regulation in effect at the time a parcel was divided, then searching that document for the definition of a subdivision, is an onerous task and may unfortunately prove fruitless since there are cases where municipal records are incomplete. Municipal definitions of a subdivision should be recorded at the Registry of Deeds when they differ from state statute.

Title attorneys and others in the real estate investment community have urged that the Legislature merely repeal the sunset language in Title 30-A, §4401(4)(H). While SPO respects the desire of these groups to create a single statewide definition of a subdivision, without any option for home rule authority to change that definition, we do not feel that repealing the sunset language will accomplish this. Based on the material in this report, it seems obvious that the existing language is vague. The statutory language has been used by developers to point out the lack of home rule authority and has been used by municipalities to claim home rule authority. Simply repealing the sunset language without addressing this ambiguity will leave everyone with the same confusion with which they started.

Subdivision Law and Growth Management

The division of land has a significant long-term impact on development patterns and land uses in a municipality and a region. Lots that have been divided into ten acre or smaller parcels are of little use for rural, resource based, economic activities. Farming, forestry, and mineral extraction generally require larger parcels in order to function. Additionally, once lots surrounding large farm, forest, or mineral extraction lots are divided into smaller sizes and begin to be used for residential purposes, use conflicts often arise making it more an more difficult for traditional rural economic activities to survive.

While zoning and other regulations may regulate lot size, subdivision regulations and definitions can influence development or division decisions. Subdivision regulations may have a negative, neutral, or positive effect on growth management.

Developers and subdividers are most likely to develop and divide in areas where there are fewer requirements. Unfortunately, in many municipalities the local subdivision regulations often require significantly more information and therefore cost in the growth areas of a community. This can have the obvious negative impact of pushing developers away from the growth areas because they produce a smaller profit for more work.

In some municipalities it may be the case that there is little or no difference between the regulations in the growth and rural areas of the municipality. This of course would make the subdivision regulations neutral with respect to the local growth management plan outlined in the local comprehensive plan. However, it is certainly possible for a municipality to use the subdivision laws and definitions to create a differential in the requirements for growth and rural areas that favors the growth areas, instead of the rural areas. By leaving the definition of a subdivision at the statutory minimum in the growth area, and modifying it to allow the review of additional divisions in the rural area, developers and landowners may be more inclined to divide in the growth area. Municipalities can enact stricter reviews where growth may be more sensitive (rural areas); and developers who want the benefits of the uniform standard will have an incentive to develop in the locally designated growth areas.

Recommendations

The State Planning Office (SPO) recommends the following:

1- *There should be a single statewide minimum definition of a subdivision.* This definition should be the currently enacted definition of a subdivision. The legislature should clearly indicate that this is a statutory minimum and home rule authority may not be used to create a definition that results in the review of fewer divisions than would be required under the statutory definition, except as provided in recommendation #2.

2- *The Legislature should allow municipalities with a locally adopted comprehensive plan that is consistent with state law to use their home rule authority to regulate subdivisions more strictly than required by state law.* This should be allowed provided that (a) the stricter regulations, including a more inclusive definition, is consistent with the adopted comprehensive plan which is consistent with state law, and (b) the more inclusive definition shall apply only in areas designated by the comprehensive plan as rural.

3- *The Legislature should require that any changes to the definition of a subdivision made through local home rule authority be recorded at the county Registry of Deeds, in order to be valid. Recorded subdivision plans should have the definition of a subdivision indicated on the plan.* Local variation in subdivision definition, and variation over time within a single municipality, has created a situation where proper title to a parcel may be very difficult to establish with certainty. If modified definitions are required to be on file at the Registry of Deeds, the question of whether or not a division should have had local review and approval will be eliminated. A parcel or assessor's based plan of the town showing the specific parcels in town affected by the modified definition must also be recorded in order for the modifications to be valid. If the municipality

neglected to record the local definition and map, the local definition would be invalid and the state statutory definition would apply.

Proposed Statutory Language

The following language is proposed to accomplish the recommendations above.

Sec. 1 The language of Title 30-A M.R.S.A. §4401(4)(H) is hereby repealed.

Sec. 2 Title 30-A M.R.S.A. §4401(4)(H) shall read:
H. This subsection, defining a subdivision, shall contain the following limits on home rule authority:

1. This definition shall be a minimum definition for all municipalities. Municipalities shall not use their home rule authority to make this definition less inclusive, thereby reviewing fewer divisions than required under the minimum statutory definition.

2. Municipalities that have a local comprehensive plan that is consistent with Title 30-A, Chapter 187, Subchapter II, may modify the definition of a subdivision to make it more inclusive, thereby reviewing more divisions than required under the minimum statutory definition. However:

    a. such modifications shall only apply to the geographic areas of the municipality designated as rural area in accordance with Title 30-A, Chapter 187, Subchapter II, §4326(2)(A); and

    b. the geographic boundary of the rural area shall be clearly mapped on a plan that shows parcel boundaries within the municipality; and

    c. in the case where a parcel is split by the geographic boundary of a rural area, the more inclusive local definition of a subdivision shall apply; and

    d. the municipality shall record the more inclusive local definition and the parcel map clearly indicating the affected parcels at the Registry of Deeds for the county in which the municipality is located. The more inclusive local definition shall not be valid until the date it and the parcel map are recorded at the county Registry of Deeds. Any amendment to the more inclusive local definition shall be enforceable

only upon the recording of the amendment at the county Registry of Deeds.

Sec. 4 A new Title 30-A M.R.S.A. §4408 is created and shall read:

Note on Recorded of Plans or Plats. All approved subdivision plats or plans shall have a note on the plat or plan that indicates the definition of a subdivision in effect in the municipality at the time of the subdivision. The note shall either be the full language of the local definition, a reference to the statutory definition if that is the locally used definition, or a reference to the Book and Page number of the locally adopted definition as recorded at the Registry of Deeds. In no case shall referencing the definition be allowed, except where the definition is the statutory definition or where the local definition is recorded at the Registry of Deeds.

Attachments

Attachment 1

Summary of Municipal Subdivision Definitions

The text below and the summary spreadsheet in this attachment has been provided by the Maine Municipal Association.

For ease of comprehending the spreadsheet, municipalities that adopted the subdivision ordinance by reference were so indicated by placing the statutory section number in each component of the statute. For example, the spreadsheet will contain a "4956" representing each statutory provision of the now-repealed Title 30 M.R.S.A § 4956.

Municipalities that adopted Title 30-A M.R.S.A. § 4401 have inherently adopted a broader spectrum of definitions than those municipalities that adopted § 4401(4), thereby only adopting the definition of subdivision. The spreadsheet will reflect the adoption of these sections accordingly.

Under Title 30-A M.R.S.A. §4401 (4)(C), municipalities may elect to count lots of 40 or more acres as lots for the purpose of subdivision review. In the spreadsheet under this column, the "E" (for Exempt) represents those ordinances that have elected to expressly exempt lots of this size. The "N" (for Non-exempt) represents municipal ordinances that have elected to review 40 + acre lots. Municipalities that do not have a letter in the blank have not adopted this provision, thus lots of 40 plus acres are exempt from subdivision review.

Section 4401(4)(G) is the only category contained in the spreadsheet that may not represent an accurate snapshot of the trends in subdivision ordinances. This section provides that leased dwelling units are not subject to review, unless the municipality has a site review process that is equally as stringent. Several municipalities have elected to include this language in the subdivision ordinance. It is unclear on the face of the ordinance, however, how or if this measure is implemented.

Biddeford:	The definition of subdivision includes the division of land for a non-residential purpose. The ordinance also provides that subdivision does not include the gift of a tract or parcel or lot of land to a spouse, mother or father, son or daughter, son-in-law, daughter-in-law, brother or sister of the grantor, provided that only one such gift to the same grantee within any five year period is allowed and that the total allowed conveyed gifts from the original tract of the grantor shall be limited to three parcels or lots within any five year period and the grantor must have approval prior to doing so.

Boothbay Harbor: In addition to the statutory language, subdivision includes the sale of an existing three or more unit structure into three or more units of sale within any five-year period.

Buxton: Limits the class of individuals for the bona fide interest exemption. It is limited to relatives.

Castine: Subdivision includes buildings held in separate ownership.

Chapman: Title 30 M.R.S.A § 4551 closely resembles Title 30 M.R.S.A § 4956, thereby defining subdivision as a division of three lots in five years. Similarly, it also provides for the subdivider's retained lot and five-year subsequent reconveyance clause and the exemption of 40+ acres of land. It contains the devise, condemnation and order of court exemption, as well as the gift-to-relative exemption. The final provision is the exemption for transfers of land to an abutter.

Chelsea: This subdivision ordinance only exempts the owner's retained lot if, upon the dividing of the first two lots the owner has retained both lots for his or her own single family residence for a period of five years. (This differs from the statutory language in that the owner must have retained both lots rather than just one lot for the purpose of the single-family residence).

Dresden: In addition to the statutory language, subdivision also occurs by any informal arrangements that result in the functional division of a tract or parcel.

Eastport: In addition to the statutory language, subdivision is the division of a tract or parcel of land into three or more lots within a five-year period for the purpose, immediate or future, of lease, sale, or building development.

East Machias: Subdivision is the division of a tract or parcel of land into three or more lots of 500 acres or less within any five-year period.

Eddington: A division of a tract or parcel of land into three or more lots within any five-year period whether accomplished by:

1. Sale or lease of land
2. Offering to sell or lease land
3. Construction, sale or lease of principal buildings
4. Offering to construct, sell, or lease principal buildings
5. A mobile home park is considered a subdivision

Embden:	Subdivision is a division of a tract or parcel into three or more lots. (There is no five-year window within which subdivision occurs).
Ellsworth:	In addition to the statutory language, subdivision also includes the division of a structure into three or more units for commercial or industrial use within five years.
Fort Fairfield:	In addition to the statutory language, subdivision also includes the division of any structure or structures on a tract or parcel of land into three or more commercial, industrial, or dwelling units or combination thereof within a five-year period.
Georgetown:	In addition to the statutory language, the ordinance also has a provision that provides any parcel within an approved subdivision shall not be further divided by any person in any fashion which would alter the approved Subdivision Plan without Planning Board approval unless more than five years have elapsed since the granting of the most recent approval for the subdivision, including the approval of any amendments to the original subdivision plan, whether or not such approved amendment directly affect the approved lot of which further division is sought.
Greenville:	Any lot up to 500 acres in size shall be counted as a lot, whether or not the parcel from which it was divided is located wholly or partly within any shoreland area.
Greenwood:	All lots of 200 acres or less shall be considered as lots unless exempted by State law.
Knox:	Subdivision includes the division of a parcel of land into three or more lots for the purpose of sale, development or building. (There is no five-year window within which subdivision occurs).
Levant:	A division of a tract or parcel of land into three or more lots within any five-year period whether accomplished by: 1. Sale or lease of land 2. Offering to sell or lease land 3. Construction, sale or lease of principal buildings 4. Offering to construct, sell, or lease principal buildings 5. A mobile home park is considered a subdivision
Liberty:	In addition to the statutory language, subdivision includes the division of a tract or parcel of land into three or more lots within any five-year period or any building project containing three or more dwelling units on a single lot.

Mt. Vernon:	In addition to the statutory language, subdivision also includes the use of a single family dwelling unit into three or more dwelling units within a five- year period.
Naples:	Subdivision includes the division of a tract or parcel of land into three or more lots for the purpose, immediate or future, of lease, sale, development or building, whether this division is accomplished by immediate platting of the land or by sale of the land by metes and bounds.
Newport:	A division of a tract or parcel of land into three or more lots within any five-year period whether accomplished by: 1. Sale or lease of land 2. Offering to sell or lease land 3. Construction, sale or lease of principal buildings 4. Offering to construct, sell, or lease principal buildings 5. A mobile home park is considered a subdivision
Pownal:	Subdivision is the division of land in single ownership into two or more parcels or lots.
So. Berwick:	In addition to the statutory language, subdivision also includes the division of a structure or structures.
Sumner:	Lots of 40 acres but less than 500 acres shall be counted as lots. Subdivision also includes developments with three or more units involved.
Swan's Island:	In addition to the statutory language, subdivision also includes the establishment on a tract or parcel of land of a multi-family dwelling unit, or the division of an existing structure or structures previously used for commercial or industrial use, whether for sale or rent or the establishment on a tract of land of a lodging unit or a dormitory, shall constitute a subdivision.
Topsham:	Subdivision is the division of a tract or parcel of land into three or more lots for the purpose, immediate or future, of lease, sale, development or building, whether this division is accomplished by immediate plotting of the land by metes and bounds
Upton:	Subdivision is the division of a tract or parcel of land into three or more lots for the purpose, whether immediate or future, for sale, transfer, legacy, conveyance or building development, but the provisions of these regulations shall not apply to the division of land for agricultural purposes.

Warren:	The ordinance places a ten-year limit on subsequent transfers of gifted parcels.
Unidentified #7:	The term subdivision includes the division of a tract or parcel of land into three or more lots of 500 acres or less.

Attachment 2

Legislative History of Title 30-A Section 4401-4407, Municipal Subdivision Law.

PL 1943, Chapter 199. "An Act Relating to Municipal Planning and Zoning." This Act provided municipalities with the authority to create a planning board that would be necessary for the future development of the municipality. The planning board was also given the authority of enforcement. This Act required that the plats of a subdivision must be approved by the municipal officers and that approval must be indicated on the plat prior to filing it with the registry of deeds. The Act further stated that an individual may not transfer, sell or otherwise agree or negotiate to sell any land by reference to the plat of a subdivision of land into 5 or more lots prior to that plat being approved by the municipal officers. The Act imposed a $200 penalty for a transfer of land that has not been approved by the planning board.

PL 1945, Chapter 24. "An Act Relating to Municipal Planning and Zoning." This Act amended the law to require that neither a zoning regulation nor an amendment shall be adopted until after a public hearing has been held. The regulations must also have the approval of 2/3 vote of the legislative body in the city, or by the town in the town meeting, prior to being adopted.

PL 1945, Chapter 293. "An Act to Correct Typographical and Clerical Errors in the Revision."
Section 15 of this Act corrected a minor word error.

PL 1951, Chapter 266. "An Act to Correct Errors and Inconsistencies in the 1944 Revision and the Session Laws of 1945, 1947, and 1949." Section 98 corrected a statutory citation.

Revised Statutes, Chapter 91, Sections 93-99, "Municipal Planning and Zoning."

PL 1957, Chapter 405. "An Act Revising the General Laws Relating to Municipalities." This Act recodified municipal law to create a new chapter to the Revised Statutes numbered 90-A. Sections 61-63 of that chapter related to Municipal Development. The Act amended the existing law to state that the planning board must continue to approve subdivision plats prior to filing in the registry of deeds, and that approval must be documented on the plat itself. In order to meet approval, the plat must be in compliance with the municipality's ordinances. Should the planning board fail to provide the applicant with written notice within 30 days after the board adjourns, the inaction will result in disapproval. The final amendment to the existing law was the removal of the term "negotiates" from the former prohibition on transferring land by reference to the plan without the approval of the planning board and replaced it with "conveys or agrees to convey".

PL 1961, Chapter 206. "An Act Relating to Municipal Regulation of Subdivisions of Land". This Act repealed the former definition of "subdivision" (division of land into 5 lots) and inserted in its place the following definition, "the division of three or more lots in urban areas or 4 or more lots in rural areas, except this provision shall not apply to any division for agricultural uses, including associated sales, service, processing and storage". The Act further defined the term urban area to include a designated area in the local zoning ordinance, or if the municipality does not have a zoning ordinance, then the areas designated by the State Highway Commission as "urban compact".

PL 1963, Chapter 31. "An Act Relating to Penalty for Conveyance of Land in Plats without Approval." This Act repealed the $200 penalty that was assessed if an individual conveyed land by reference to a plat that had not yet been approved by the planning board and was not recorded by the registry of deeds. This was changed to read that the individual may be enjoined by the municipality rather than fined.

PL 1963, Chapter 123. "An Act Relating to Filing of Approved Subdivision of Land." During the same session, the Legislature also enacted a provision that would require the individual to file the subdivision plot with the municipal clerk rather than filing it in the registry of deeds.

PL 1967, Chapter 401. "An Act Relating to Realty Subdivisions and Dilapidated Buildings in Municipalities". Among other changes in the law, this Act expanded the criteria upon which subdivision approval is based. This new language included a minimum lot size of 15,000 square feet if the lot does not contain either a public sewerage disposal system or a public water supply system.

PL 1969, Chapter 365. "An Act Relating to the Realty Subdivisions." This Act repealed the former 15,000 square foot minimum lot size and replaced it with a 20,000 square foot minimum lot size for those parcels that were not served by public or community sewer. The Act did allow smaller lots for single family housing provided that the land was approved by the Department of Health and Welfare.

1969-1970. The implementation of municipal home rule authority in Maine.

PL 1971, Chapter 454. "An Act Relating to Municipal Regulation of Land Subdivisions." This is the first comprehensive subdivision law. This Act repealed the former definition of a subdivision and redefined it to include the division of a tract or parcel of land into 3 or more lots for the purpose of sale, development or building. The Act expressly provided that when the municipality has established a planning board, agency, or office, that entity may adopt regulations governing subdivision that shall control until superseded by provisions adopted by the legislative body of the municipality. In those instances in which the municipality has not adopted a board, agency or office, then the municipal officers may adopt subdivision regulations which shall control until superseded by provisions adopted by the legislative body of the municipality. The Act provided a list of criteria that should be met in establishing subdivision regulations, or used during the approval process. The Act provided an

enforcement element by establishing that no person, firm, corporation, or other legal entity may convey, offer or agree to convey any land in a subdivision which has not been approved by the planning board or agency and recorded in the registry of deeds. The approval must still appear on the plat itself prior to filing in the registry of deeds. The Act implemented a monetary penalty of not more than $1000 for each illegal conveyance. The Attorney General, the municipality or the municipal officers were provided the authority to enjoin any violations.

PL 1973, Chapter 465. "An Act to Amend Municipal Regulation of Land Subdivision Law". This Act repealed the first section of PL 1971, Chapter 454. In its place, the Legislature provided a new definition of subdivision. This definition introduced the five-year window within which a subdivision may occur. According to the Act, a subdivision is "the division of a tract or parcel of land into 3 or more lots within any 5 year period, whether accomplished by sale, lease, development, building or otherwise, except when the division is accomplished by inheritance, order of court or gift to a relative, unless the intent of such gift is to avoid the objectives of this section". The Act provided guidance for determining when a parcel is actually divided. The language instructed that if the land is divided into three or more parcels, then the land retained by the subdivider for his or her own use as a single-family residence for a period of at least five years is not to be included in the count. It also clarified that the sale or lease of any parcel that is 40 acres or more is not considered a subdivision, unless the intent of such sale or lease is to avoid legislative intent. The Act also amended PL 1971 with respect to the enforcement provisions. The amendment expressly included any person, firm corporation, or other legal entity who sells, leases, or conveys for consideration, offers or agrees to sell, lease or convey for consideration any land in a subdivision which has not been approved. The Act established a provision that excluded proposed subdivisions approved by the planning board or municipal officials prior to the date of September 23, 1971. It also excluded a division of a tract or parcel by sale, gift, inheritance, lease or order of court into three or more lots and upon which lots permanent dwelling structures legally existed prior to the September 23, 1971 date. These divisions do not constitute a subdivision for the purposes of this Act.

PL 1973, Chapter 700. "An Act to Clarify the Real Estate Subdivision Law." This Act provided that a lot shall not include a transfer or an interest in land to an abutting landowner. The Act also established the owner of a lot which, at the time of this creation, was not part of a subdivision, need not get municipal approval for the lot in the event that either the subsequent actions of the prior owner or his successor in interest create a subdivision of which the lot is a part. The municipal reviewing authority may consider the existence of the previously created lot in making its determination of approval of the proposed subdivision.

PL 1975, Chapter 468. "An Act to Amend the Subdivision Law to Provide for More Housing in the State." This Act required the municipal reviewing authority to issue the applicant written notice indicating whether the application is complete or whether more information is required. This notice must be given within 30 days of the receipt of the application.

PL 1975, Chapter 475. "An Act to Clarify the Municipal Regulation of Land Subdivision Law." The definition of subdivision is amended to include "the division of a tract or parcel of land into three or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise". The language created an exemption for lots conveyed by devise, condemnation, order of court, gifts to relative, and transfers to an abutter.

The Act also provided some guidance as to when the parcel is actually divided. According to the language, a tract or parcel of land is divided into three or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first two lots and the next dividing of either of the first two lots, by whomever accomplished, unless otherwise exempted, shall be considered to create a third lot, unless both dividings are accomplished by a subdivider who shall have retained one of the lots for his or her own use as a single family residence for a period of at least five years prior to the second dividing. The Act further defined a tract or parcel of land as all contiguous land in the same ownership, provided that the land located on opposite sides of a public or private road shall be considered a separate tract or parcel of land unless the road was established by the owner of land on both sides.

Finally, the Act also required the submission of a survey plan of the property showing the permanent markers set at all the corners of the parcel.

PL 1975, Chapter 703. " An Act to Revise Requirements for Permanent Markers under the Land Subdivision Law." This Act removed the prerequisite that required permanent markers on all corners of the property prior to recording the plot in the registry of deeds. The Act also allowed the municipality, municipal planning board or the municipal officers to recover attorney's fees in the instance in which the court determines that there has been a violation associated with recording. The Act allowed the planning board to institute action for injunctive relief.

PL 1977, Chapter 315. "An Act Requiring Permanent Markers Prior to the Sale or Conveyance of Land in an Approved Subdivision." This Act reinstated the requirement of permanent markers prior to seeking approval from the municipal reviewing authority.

PL 1977, Chapter 564. "An Act to Make Additional Corrections of Errors and Inconsistencies in the Laws of Maine." The prohibition against dividing the parcel without the municipal reviewing authority's approval is expanded by this Act to include the terms "develop" and "build upon".

PL 1977, Chapter 696. "An Act to Make Additional Corrections of Errors and Inconsistencies in the Laws of Maine." The Act redesigned the penalties assessed for not receiving approval and registering the subdivision plat with the registry of deeds. The new language stated that violations shall be punished by a fine of not more than $1000 per occurrence.

PL 1979, Chapter 435. "An Act to Permit the Consideration of Solar Access Issues when Approving Any Subdivision. " This Act authorized the municipal planning board or reviewing authority, in the interest of protecting and assuring access to direct sunlight for solar energy systems, to restrict, prohibit, or control development through the use of subdivision regulations. The Act allowed regulations to require development plans containing restrictive covenants, height restrictions, side-yard, and setback requirements.

PL 1979, Chapter 472. "An Act Relating to the Protection of Ground Water." In 1979, the Legislature added another criterion to be considered in reviewing and approving a proposed subdivision. The reviewing authority must give consideration to the quality and quantity of the ground water.

PL 1981, Chapter 195. "An Act Further Amending the Planning and Zoning Statute." This Act required that all subdivision plats or plans to have the name and address of the person that is responsible for preparing the plat or plan.

PL 1985, Chapter 176. "An Act Concerning Revision or Amendment of Approved Subdivision Plans". This Act established that any revisions or amendments to an existing plat or plan must identify the original subdivision plan that is to be revised or amended. The registry of deeds must make a notation in the index that the original plan has been superseded.

PL 1985, Chapter 794. "An Act to Enhance the Sound Use and Management of Maine's Coastal Resources." This Act amended the guidelines that must be followed when making the determination to approve a subdivision. The amendment included new language that required the reviewing panel to consider the adverse effects on the scenic beauty of the area. The new language required consideration of public rights for physical or visual access to the shoreline. The new language also required the subdivider to determine if the parcel is located in a flood zone. If so, then the developer must determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The plat required that principal structures on lots in the subdivision shall be constructed with their lowest floor, (including the basement) at least one foot above the 100-year flood elevation.

PL 1987, Chapter 182. "An Act to Require Recording of Certain Subdivision and Zoning Variances." This Act established the requirement that any variance from the applicable subdivision standards be noted on the plan that is recorded in the registry of deeds.

PL 1987, Chapter 514. "An Act to Enhance Local Control of Community Growth and Strengthen Maine's Land Use Laws." This Act provided that lots located wholly or partially in any shoreland zone may be reviewed by the municipality provided the average lot depth to shore frontage ratio is greater than five to one. The Act further established that development of three or more 40-acre lots must be filed with the registry of deeds.

PL 1987, Chapter 737. "An Act to Recodify the Laws on Municipalities and Counties". Among other technical changes, this Act recodified subdivision law without substantive changes.

PL 1987, Chapter 810. "An Act to Establish a Resource Protection Law." This Act established an exemption for land in the context of subdivision review that is given to the municipality, unless that gift was done to avoid the objectives of the statute. It also amended the means necessary for determining whether a tract or parcel of land was divided. According to the new language, the first dividing of the tract is considered to create the first two lots and the next dividing will create the third lot (regardless of who divides it), unless the subdivider retained one of the lots for his or her own use as a single-family residence. The new provision created an exemption if the subdivider retained one of the lots for "open space" land for a period of at least five years prior to the second dividing. The Act changed the language of the 40 acre exemption to hold that the tract shall not be counted as a lot unless the lot from which it was divided is located wholly or in part within any shoreland area or the municipality elected to count lots of 40 acres or more in size as subdivision lots. Further amendments allowed for a multi-stage application or review process consisting of no more than three stages. These stages included a preapplication sketch plan, preliminary plan and the final plan. Other amendments to Title 30 § 4956 included a requirement that upon receiving the application, the reviewing authority must notify all abutting property owners of the proposed subdivision specifying its location. Under the criteria necessary for considering subdivision applications, the plan must be in accordance with the subdivision regulation or ordinance. The new language clarified that it is the municipal reviewing authority that has the authority to interpret the ordinances and plans.

PL 1987 Chapter 864. "An Act to Clarify the Application of the Resource Protection Law and the Site Location Law." This Act clarified that PL 1987, Chapter 810 applied to any divisions of land that occurred after April 19, 1988. It also applied to any applications for subdivision approval submitted after that date.

PL 1987, Chapter 885. "An Act to Enhance Land Use Regulation." This Act responded to two Maine Supreme Court decisions (*Town of York v Cragin*, 541 A.2d 932 (Me. 1998) and *Town of Arundel v Swain*, 374 A.2d 317 (Me. 1977)). The amendment further expanded the definition of subdivision to include the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a five-year period and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purpose of this paragraph.

Further language was created to expressly state that nothing in this section may be construed to prevent a municipality from enacting an ordinance under its home rule authority which expanded the definition of subdivision to include the division of a structure for commercial or industrial use or which otherwise regulates land use activities.

The Act also defined the term "dwelling unit" to mean any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. Leased dwelling units are not subject to subdivision review if the units are otherwise subject to municipal review at least as stringent as that required under this section.

Finally, the enforcement clause is amended to include the term dwelling unit.

PL 1989, Chapter 104. "An Act to Correct Errors In the County and Municipal Law Recodification". This emergency legislation enacted Title 30-A, Municipalities and Counties. The amended language defined "subdivision" to mean "a division into three or more lots within 5 years beginning on or after September 23, 1971".

New language defined "new structure or structures". This included any structure for which construction begins on or after September 23, 1988. It also included the area in the expansion of an existing structure. (Section 4401(5)).

The Act also outlined the outstanding river segments. (Section 4401 (7)).

The remainder of the Act provided a timeline under which the municipal reviewing authority must review subdivision plans. It also provided the review criteria that should be considered in the review of the application. (Section 4404).
The Act stated that a building inspector may not issue a permit for a building or use within a land subdivision unless the subdivision has been approved. Any violations are punished according to the enforcement section.

The Act further required that any application for an amendment or a revision to a subdivision that has been previously approved, needs to indicate the proposal to amend an approved subdivision. Once registered, that amended/revised plan or plat must indicate the index for the original plat that was superseded by the other plan.

The Act further amended the monetary penalties under the enforcement section. The minimum penalty for starting construction, undertaking a land use activity without the necessary permit or a specific violation is $100 and the maximum is $2500. The Act also authorizes ordering the violator to correct and abate the violations, unless abatement would result in a health threat, etc. If the municipality wins in court, it may be awarded reasonable attorney's fees and costs, if the defendant wins, he/she may receive the fees and costs. The Act established considerations for how to set the penalty. The maximum penalty may exceed $2500 but may not exceed $25,000.

PL 1989, Chapter 104. "An Act to Correct Errors in the County and Municipal Law Recodification." Among other technical changes, this Act established the legislation was to take effect on February 28, 1989.

PL 1989, Chapter 497. "An Act to Clarify the Subdivision Laws." This Act amends Title 30-A § 4401 to include a new definition of the term "principal structure". The term included "any building or structure in which the main use of the premises takes place".

The Act also amended the definition of "subdivision" found in Title 30-A § 4401(4). The new language defined a subdivision as "the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a 5 year period or the construction of 3 or more dwelling units on a single tract or parcel of land".

Section G of 4401 (4) is amended to provide that despite these provisions, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required.

This Act further provided that if any portion of a subdivision crossed municipal boundaries, then the reviewing authorities from each municipality must meet jointly to discuss the application.

Finally, this Act modified the public hearing process and the decision process, and added the consideration of Municipal Solid Waste impacts to the list of review criteria.

PL 1989, Chapter 326. "An Act to Clarify Provisions of the Subdivision Law." Among other technical changes, this Act amended the time period in which a variance must be filed prior to having legal effect. The recording must occur within the first 90 days after subdivision approval or the variance is void.

PL 1989, Chapter 404. "An Act to Further Protect Freshwater Wetlands". This Act defined "freshwater wetland" and required all potential freshwater wetlands within the proposed subdivision to be identified on any maps submitted at the time of application, regardless of the size of the wetland.

PL 1989 Chapter 429. "An Act to Regulate Development Along Certain Water Bodies." Among other technical changes, this Act defined the terms "river, stream, or brook".

PL 1989, Chapter 762. "An Act to Prohibit the Development of Spaghetti-lot Subdivision." This emergency legislation created the definition of "spaghetti-lot". A spaghetti-lot is defined as "a parcel of land with a lot depth to shore frontage ratio greater than 5 to 1". Shore frontage referred to land abutting a river, stream, brook, coastal wetland or great pond. The prohibition on spaghetti lots was enacted both with respect to subdivision law and land use law in the unorganized territories under the jurisdiction of LURC.

With respect to subdivision law, Title 30-A Section 4404 (17) was enacted to prohibit spaghetti-lots. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland, then none of the lots created within the

subdivision may have a lot depth to shore frontage ratio greater than 5 to 1. The enactment did apply to any pending applications for subdivision approval.

PL 1989, Chapter 878. "An Act to Correct Errors and Inconsistencies in the Laws of Maine." Part A-85 of this Act amended the section on "flood areas". If the subdivision or any part of it is in a flood prone area, then the subdivider shall determine the 100-year flood elevation and the flood hazard boundaries within the subdivision. There is a condition of approval that required the principal structures in the subdivision to be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Title 30-A section 4404 (16) was enacted to require the proposed subdivision to provide for adequate storm water management.

This Act also repealed the former definition of freshwater wetlands and enacted the following: "All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands".

PL 1989, Chapter 772. "An Act to Correct the Subdivision Laws." This Act amended the definition of subdivision to include the terms "or placement" of 3 or more dwelling units on a single tract or parcel of and the division of an existing structure(s) previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The Act also enacted language that provided transfers made by devise, condemnation, order or court, gift to a relative or municipality or transfers to the abutter do not create a lot unless the intent of the transferor was to avoid the objectives of this section. The Act placed a 5-year recapture period on real estate transfers made by a gift to a person related to the donor by blood, marriage or adoption. If the real estate was transferred within that five-year period to someone not meeting these prerequisites, then a lot is created.

The Act also amended the definition of freshwater wetlands by removing the term "potential" freshwater wetlands, to simply read "freshwater wetlands".

PL 1991, Chapter 500. "An Act to Amend the Exemption of Certain Divisions from the Definition of Subdivision". This Act governed the subsequent transfer of an exempt subdivision lot (gift to a relative, subdivider's own use, conveyance to an abutter) within the five-year period that normally de-exempts those conveyed lots and triggers review. Under the terms of this Act, the de-exemption does not occur with the conveyance of a "bona fide security interest."

PL 1991, Chapter 838. "An Act to Further Enhance and Protect Maine's Great Ponds." In addition to several non-substantive changes to subdivision law, this Act created new language that added "Lake phosphorous concentration" to the criteria that should be considered by the planning board.

PL 1995, Chapter 93. " An Act to Amend the Municipal Subdivision Laws Regarding Application Requirements". This Act required that the municipal reviewing authority

may not accept or approve final plans or final documents that have not been sealed and signed by the professional land surveyor that prepared the plan/document.

PL 1997, Chapter 51. "An Act to Exempt Public Airports with Approved Airport Layout Plans from Subdivision Review." This Act provided that an airport may be exempt from the subdivision review process provided that it has an approved airport layout plan and has received final approval from the airport sponsor (the DOT and FAA).

PL 1997, Chapter 199. " An Act to Provide Notification of Utility Services". This Act established that a public utility may not install services in a subdivision unless written authorization has been issued by the appropriate municipal officials, or other written arrangements have been made between the municipal officials and the utility.

PL 1997, Chapter 226. " An Act to Amend the Law Concerning Municipal Review and Regulation of Subdivisions". This Act provided that if any portion of a subdivision crossed municipal boundaries then all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality. All review hearings under Section 4407 must be done jointly. The municipal officials may waive the requirement for a joint hearing.

Pursuant to this process, this Act provided that any proposed subdivision that crosses into another municipality will not cause unreasonable traffic congestion or unsafe conditions within the existing public ways located in both municipalities.

PL 1997, Chapter 323. " An Act to Impose a Statute of Limitations for Violations of Municipal Subdivision Ordinances". This Act provided that the subdivision review and approval process does not apply to subdivisions that have existed for 20 years unless (1) a subdivision has been enjoined pursuant to section 4406, (2) subdivision approval was expressly denied by the municipal reviewing authority and record of the denial has been recorded in the appropriate registry of deeds, (3) a subdivision lot owner was denied a building permit under section 4406 and record of the denial was recorded in the appropriate registry or (4) the subdivision has been the subject of an enforcement action or order, and record of the action or order was recorded in the registry of deeds.

PL 1999, Chapter 761. "An Act to Improve Public Water Supply Protection." This Act required the municipal reviewing authority to notify the public drinking water supplier by mail once they have received an application for a subdivision that is located within a source water protection area.

PL 2001, Chapter 40. "An Act to Remove Redundant Written Authorization Requirements." This Act amended the process governing the approval of utility installations in possible subdivisions. According to this provision, once the first utility has obtained the necessary permits from the appropriate municipal officials, then subsequent public utilities need not receive written authorization to install services to a lot or dwelling unit in the subdivision.

PL 2001, Chapter 359. "An Act to Implement the Recommendations of the Task Force to Study Growth Management." This Act made substantive changes to Maine's subdivision law with respect to the statutory definition of "subdivision". The Act contained a retroactivity clause which established its effective date as June 1, 2001.

In order to discount the subdivider's residential lot from a subdivision, the Act clarified that the exempt lot must have been the conveyer's principal residence for a minimum of five years prior to the subdivision. In order for certain gift lots to escape subdivision review when conveyed to a relative, the Act required that the person conveying the property must have owned the land for at least five years prior to the "gift" conveyance to the relatives, and the Act further required that the "gift" lot cannot be discounted from subdivision review if it is conveyed to the relative for more than 50% of its assessed value. Finally, a conveyance to an abutter will trigger subdivision review if that lot is subsequently reconveyed to a third party (unattached from the merged lot) within the five-year period of time.

This Act also established a moratorium on the ability of a municipality to adopt a definition of "subdivision" which is different from the definition of "subdivision" in Maine law. This moratorium is lifted as of October 1, 2002. Those municipalities that currently use a different definition of subdivision are "grandfathered" and their definitions will remain legal.

The Act directed the State Planning Office to undertake several tasks: 1) catalog municipal subdivision ordinances according to the definitions of "subdivisions" used; 2) to analyze the legislative history of Maine's subdivision law with emphasis on the relationship to home rule authority, and 3) to develop a list of the possible strategies to coordinate the subdivision review and title search procedures.